

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

Indianapolis, IN

REFRESHMENT SERVICES, INC.  
d/b/a TERRE HAUTE PEPSI<sup>1</sup>  
Employer

and

Case 25-RC-10151

TEAMSTERS, LOCAL UNION NO. 135, a/w  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS<sup>2</sup>  
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held November 6, 2002, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.<sup>3</sup>

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<sup>1</sup> The name of the Employer appears as stipulated by the parties.

<sup>2</sup> The name of the Petitioner has been corrected to reflect its full legal name.

<sup>3</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

## I. ISSUES

The Petitioner seeks an election within a unit comprised of approximately 12 Route Salesmen, three Bulk Drivers/Merchandisers, and two Swingmen employed by the Employer at its facility located in Terre Haute, Indiana. The Petitioner contends that these employees comprise an appropriate unit and that the Merchandisers and Pre-Sale Merchandisers who work at the facility should be excluded from the unit. The Employer maintains that a unit of only Route Salesmen, Bulk Drivers/Merchandisers, and Swingmen does not constitute an appropriate unit and that an application of community-of-interest criteria mandates the conclusion that all full-time Route Salesmen, Bulk Drivers/Merchandisers, Swingmen, Merchandisers and Pre-Sales Merchandisers at the Employer's facility must be included in one unit. Thus, the Employer's position is that the appropriate unit should consist of 12 Route Salesmen, three Bulk Drivers/Merchandisers, four Pre-Sales Merchandisers, two Swingmen, and two Merchandisers.<sup>4</sup>

## II. DECISION

For the reasons discussed in detail below, including such factors as the degree of similar qualifications, training, and skills, the similarity in job functions, and the established history of collective-bargaining, it is concluded that the Route Salesmen, Bulk Drivers, and Swingmen constitute a unit appropriate for collective bargaining.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time Route Salesmen, Bulk Drivers/Merchandisers, and Swingmen employed by the Employer at its Terre Haute, Indiana location; BUT EXCLUDING all Pre-Sales Merchandisers, Merchandisers, warehouse employees, vending employees, office clerical employees, professional employees, part-time employees, managerial employees, and all guards and supervisors as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately 17 employees. The record reflects a history of collective bargaining between the Petitioner and the Employer.<sup>5</sup>

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<sup>4</sup> The parties have stipulated that the following classifications should be excluded: all warehouse employees, vending employees, professional employees, part-time employees, managerial employees, office clericals, guards, and supervisors as defined by the Act.

<sup>5</sup> The parties stipulated that Petitioner had previously entered into a collective-bargaining agreement with a company named Pepsi Cola Bottling Company of Terre Haute, which was effective from May 1, 1992 and May 1, 1998. The parties also stipulated Pepsi Cola Bottling Company of Terre Haute and the Employer are the same company. According to the collective-bargaining agreement, the Petitioner represented all Route Salesmen, Drivers/Merchandisers, and Tel-Sell employees employed at the Employer's facility located in Terre Haute, Indiana during the duration of the agreement. Based on the collective-bargaining agreement, Tel-Sell employees also drove route trucks and delivered products to customers. However, record evidence establishes that the position of Tel-Sell was abolished about four years ago. The record further reflects that the Petitioner was decertified as the collective-bargaining agent of the employees about four years ago.

## A. Statement of Facts

The Employer, Terre Haute Pepsi, is an Illinois corporation engaged in the sale and distribution of soft drinks and other beverages including water, orange juices, and sports drinks. The Employer also provides vending machines to supermarkets and retail outlet stores.<sup>6</sup> The Employer has an office and facility located in Terre Haute, Indiana. It also operates facilities in Springfield and Decatur, Illinois. The Employer's operations are divided into two separate departments: sales and bulk. Both of these functions operate at the same location. The only significant difference between the two departments is the size of the clients serviced by each department. The bulk department supplies beverages and vending machines to large stores such as Wal-Mart, Kroger, and Sam's Club in Terre Haute and Brazil, Indiana. The sales department supplies beverages and vending machines to smaller stores such as Speedways, Jiffy Marts, and some restaurants in the Indianapolis and Rockville, Indiana.

The highest-ranking member of management at the facility is its General Manager. The General Manager oversees all of the Employer's operations including both the sales and bulk departments of the Employer's business. Within the sales department, there is a Sales Manager who reports to the General Manager. Also, there are three District Managers in the sales department who report to the Sales Manager. In the Employer's bulk department, there is a Bulk Manager who reports to the Sales Manager.

### Route Salesmen

There are 12 Route Salesmen employed in the Employer's sales department. There are two groups of Route Salesmen, which are categorized according to the routes that they run. Nine of the 12 Route Salesmen run routes, which are called traditional routes. They drive tractor-trailer trucks, which are used to deliver around 600 to 800 cases of soft drinks and other beverages to smaller customers of the Employer in Indianapolis and Rockville, Indiana such as Speedways, Jiffy Marts, and some restaurants. They load cases of soft drinks and beverages into their trucks at the Employer's facility, unload their cases at places of delivery, and load empty cases into their trucks. They place soft drinks and beverages on the customers' shelves and in the customers' coolers. They also clean shelves and racks so that soft drinks may be placed on them. They set up various advertising displays for their customers.<sup>7</sup> They are responsible for maintaining route books, which are used to record their routes, deliveries, and customers. They are also responsible for keeping their trucks clean and checking the trucks' oil levels on a weekly basis. In addition to their other duties, the Route Salesmen are encouraged to solicit new customers in order to acquire new accounts.

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<sup>6</sup> The Employer is not engaged in the manufacturing or bottling of soft drinks. The Employer purchases soft drinks and other beverages from Wis-Pak, a bottling group located in Quincy, Illinois.

<sup>7</sup> Route Salesmen spend sixty percent of their time placing soft drinks and beverages on shelves and building advertising displays.

The remaining three Route Salesmen run routes called full-service routes. They drive single-unit trucks, which are used to deliver syrup and vending machines to convenience stores and retail outlet stores located in the Indianapolis area. They load syrup or vending machines into their trucks at the Employer's facility and unload their cases of syrup or vending machines at places of delivery. In addition to delivering vending machines to customers, they also collect money from the vending machines and return the money to the Employer's facility to be counted. Furthermore, they are responsible for restocking the vending machines with soft drinks. These route salesmen are responsible for maintaining route books, which are used to record their routes, deliveries, and customers. They are also responsible for keeping their trucks clean and checking oil levels on a weekly basis. In addition to their other duties, the Route Salesmen are encouraged to solicit new customers in order to acquire new accounts.

The Employer requires all individuals hired as Route Salesmen to have commercial drivers licenses. The Employer also requires all individuals hired as Route Salesmen to undergo physical exams. The Employer provides them with specialized training to ensure that they maintain their commercial drivers license requirements.

All of the Route Salesmen report to one of the three District Managers in the sales department.<sup>8</sup> Each of the Route Salesmen, who run traditional routes, earns a base pay of \$80.00 per week plus a commission of 39.5 cents per case delivered. Each of the Route Salesmen, who run full-service routes, receives higher base pay than \$80.00 per week.<sup>9</sup> Even though their workdays start between 5:00 A.M. and 7:00 A.M., Route Salesmen do not have set work hours. Their hours vary according to sales volume. If sales are high, Route Salesmen may work up to 12 hours per day. If sales are slow, Route Salesmen may work only six hours per day. All of the Route Salesmen punch time clocks.

### Swingmen

There are two Swingmen employed in the sales department. They perform the duties of the Route Salesmen when the Route Salesmen are either on vacation, injured, or ill. Route Salesmen take vacations at various times depending on their seniority. Depending on their seniority, Route Salesmen may take up to four weeks of vacation. To learn the route, Swingmen travel with the Route Salesmen whom they are replacing during the week prior to the Route Salesmen's scheduled vacation. Once the Route Salesmen go on vacation, the Swingmen perform all of the duties normally performed by the Route Salesmen. They also work the same hours. If none of the Route Salesmen are on vacation and sales are high, the Swingmen help Route Salesmen place soft drinks and beverages on the customers' shelves and in the customers' coolers. Swingmen also help Route salesmen set up various advertising displays for customers.

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<sup>8</sup> One of the District Managers supervises 5 of the Route Salesmen who run traditional routes. Another District Manager supervises the remaining 4 Route Salesmen who run traditional routes. Another District Manager supervises 3 of the Route Salesmen who run full-service routes.

<sup>9</sup> The record does not reflect exactly how much the Route Salesmen, who run full-service routes, receive in compensation.

When they are not running routes, swingmen perform various other duties, which may be assigned to them including cleaning stores.

The Employer requires all individuals hired as Swingmen to have commercial drivers licenses. The Employer also requires all individuals hired as Swingmen to undergo physical exams. Furthermore, the Employer provides them with specialized training to ensure that they maintain their commercial drivers license requirements.

All of the Swingmen report to the District Managers in sales department. Swingmen earn \$10.00 per hour when they are not performing the duties of Route Salesmen. If they perform the duties of the Route Salesmen, they receive the same pay as the Route Salesmen who they are replacing. All Swingmen punch time clocks when they are running routes. When they are not running routes, Swingmen work eight-hour days. They also work Monday through Friday when they are not running routes.

#### Bulk Driver/Merchandisers

There are four Bulk Driver/Merchandisers in the bulk department. They drive semi-trucks, which are used to carry about 2000 cases of soft drinks and other beverages to larger customers of the Employer in Terre Haute and Brazil, Indiana, including Wal-Mart, Kroger, and Sam's Club. They load cases of soft drinks and beverages into their trucks at the Employer's facility, unload their cases at places of delivery, and load empty cases into the trucks. They place soft drinks and beverages on the customers' shelves and in the customers' coolers. They also clean shelves and racks so that soft drinks may be placed there. They set up various advertising displays for their customers.<sup>10</sup> They are responsible for routinely communicating with the Account Manager of each customer to ensure that accounts are being handled properly. In addition, Bulk Driver/Merchandisers are responsible for maintaining route books, which are used to record their routes, deliveries, and customers. They are also responsible for inspecting their trucks on a daily basis.

The Employer requires all individuals hired as Bulk Driver/Merchandisers to have commercial drivers licenses. The Employer also requires all individuals hired as Bulk Driver/Merchandisers to undergo physical exams. In addition, the Employer provides them with specialized training to ensure that they maintain their commercial drivers license requirements.

All of the Bulk Driver/Merchandisers report to the Bulk Manager. Each of the Bulk Driver/Salesmen earns \$12.00 per hour. All of the Bulk Driver/Merchandisers punch time clocks. All of the Bulk Driver/Merchandisers work eight-hour days Monday through Saturday. They receive Sundays and one day during the week off.

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<sup>10</sup> Bulk Driver/Merchandisers make three to four stops during their routes. They normally place soft drinks on shelves and build advertising displays during their last stop. In addition to their last stop, Bulk Driver/Merchandisers spend two days during the week placing soft drinks on shelves and building advertising displays. Forty percent of their time is spent engaging in these activities.

### Pre-Sales Merchandisers

There are three Pre-Sales Merchandisers employed in the bulk department. It is the responsibility of the Pre-Sales Merchandisers to meet with store managers of large customers such as Kroger, Sam's Club, and Wal-Mart in Terre Haute to acquire new accounts and sell various items including advertising displays. Also, it is the responsibility of the Pre-Sales Merchandisers to meet with store managers to ensure that accounts are being handled properly. If there are problems with any particular account, the customer will normally contact a Pre-Sales Merchandiser to correct the problems.

The Employer supplies Pre-Sales Merchandisers with company vehicles, which they use to service various customers. The Employer fuels the company cars and provides maintenance on the vehicles. They drive directly to the stores from their homes rather than go to the Employer's facility. Pre-Sales Merchandisers also spend eighty percent of their time building advertising displays at various stores and making sure that the shelves and racks are clean.

Pre-Sales Merchandisers are not required to have commercial drivers licenses or undergo physical exams. They also do not run routes.

All of the Pre-Sales Merchandisers report directly to the Bulk Manager. Each of the Pre-Sales Merchandisers earns \$384.00 per week. They also receive five cents for every 12-pack of soft drink, 24-pack of soft drink, and 16-ounce and 24-ounce six packs of soft drinks delivered. They receive 25 cents for every 20-ounce bottle of soft drinks delivered. Even though their workdays start at 6:00 A.M., Pre-Sales Merchandisers do not have set work hours. Their hours vary according to sales volume. If sales are high, Pre-Sales Merchandisers may work up to 12 hours per day. If sales are slow, Pre-Sales Merchandisers may work only six hours per day.

### Merchandisers

There are two Full-Time Merchandisers in the bulk department. They service large customers of the Employer such as Kroger, Sam's Club, and Wal-Mart in Terre Haute. They place soft drinks on shelves, clean shelves, coolers, and racks, and build advertising displays. They spend all of their time engaging in these activities. Merchandisers drive their own vehicles directly to the stores from their homes. The Employer gives them a gas card to fill their tank once a week.

Pre-Sales Merchandisers are not required to have commercial drivers licenses or undergo physical exams. They also do not run routes.

All of the Merchandisers report directly to the Bulk Manager. Each of the Merchandisers earns \$10.00 per hour. All of the Merchandisers work eight-hour days seven days a week. Their workdays start at 6:00 A.M.

### Employees

All employees are subject to the same basic disciplinary rules. They receive the same fringe benefits including vacations and insurance. They all wear the same uniforms. All of the employees receive training regarding building advertising displays and placing soft drinks on shelves and in coolers.

## B. Discussion

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act," NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit, American Hospital Association v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988).

The Petitioner asserts that a unit of Route Salesmen, Bulk Drivers/Merchandisers, and Swingmen is appropriate because they share a community of interest. The Employer contends that a unit of Route Salesmen, Bulk Drivers/Merchandisers, and Swingmen only does not constitute an appropriate unit and that if one applies normal community-of-interest standards, the appropriate unit must consist of Route Salesmen, Bulk Drivers/Merchandisers, Pre-Sales Merchandisers, Swingmen, and Merchandisers. Based upon the record described above and existing Board law, it is concluded that the Route Salesmen, Bulk Drivers/Merchandisers, and Swingmen constitute an appropriate unit.

The Board has found that a unit of drivers may be an appropriate unit for collective bargaining when it is established that the drivers comprise a distinct and homogeneous group who share a community of interest sufficiently different from that of other employees. Center For Laboratory Medicine, Inc. d/b/a Damon Medical Center, 234 NLRB 387, 388 (1978). In defining the appropriate bargaining unit, the Board weighs various community-of-interest factors, including:

...a difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of time spent away from employment situs; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees; and history of bargaining. Overnite Transportation Company, 322 NLRB 723 (1996).

In the instant case, the Route Salesmen, Bulk Driver/Merchandisers, and Swingmen constitute a distinct and homogeneous group. They are required to have commercial drivers licenses and undergo physical exams as conditions of their employment. The Employer provides them with specialized training to ensure that they maintain their commercial drivers license requirements. They are also required to punch time clocks. When Swingmen substitute for Route Salesmen, they perform the same duties as Route Salesmen. Swingmen also perform the same duties as Bulk Driver/Merchandisers except that they drive tractor-trailer trucks rather than semi-trucks when they run routes.

The Swingmen also receive the same pay and work the same hours as the Route Salesmen when they run routes. The Swingmen and the Route Salesmen work under the same supervision and in the same department. Even though Bulk Driver/Merchandisers work under different supervision, work different hours, and receive a different method of compensation than Swingmen or Route Salesmen, they possess the same skills and perform the same functions as the Route Salesmen and Swingmen who substitute for Route Salesmen. With the exception of building advertising displays and placing soft drinks on shelves and in coolers, there is no evidence that any other employees possess similar qualifications or perform similar functions.

Furthermore, there is virtually no integration of work functions between Route Salesmen, Bulk Driver/Merchandisers, Swingmen, and other employees.<sup>11</sup> There is, however, a high degree of integration of work functions between Route Salesmen, Bulk Driver/Merchandisers, and Swingmen. The record shows that Swingmen routinely substitute as Route Salesmen and perform the same duties, work the same hours, and receive the same pay when they substitute as Route Salesmen. The record also shows that, on at least one occasion, a Bulk Driver/Merchandiser has substituted as a Route Salesman.

The record also shows that the Union has previously represented a unit of drivers at the Employer's facility, which included Route Salesmen, Bulk Driver/Merchandisers, and Tel-Sell employees. There is no evidence in the record that the duties or functions of the Route Salesmen and Bulk Drivers have changed significantly. Furthermore, there is no evidence that Pre-Sales Merchandisers or Merchandisers share a community of interest with the Route Salesmen, Swingmen, or Bulk Driver/Merchandisers as proposed by the Employer. Therefore, based on the foregoing, a unit of Route Salesmen, Swingmen, and Bulk Merchandisers constitutes an appropriate unit.

### III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers, but who have permanently been replaced, as well as their replacements are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for

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<sup>11</sup> The record shows that, on one occasion, a Bulk Driver/Merchandiser temporarily substituted as a Merchandiser. However, there is no evidence that a Pre-Sales Merchandisers or a Merchandiser has ever substituted for a Route Salesman, Bulk Driver/Merchandiser, or a Swingman.

cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Local Union No. 135, a/w International Brotherhood of Teamsters.

#### IV. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

#### V. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **November 27, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

## VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 4, 2002.

Issued at Indianapolis, Indiana, this 20th day of November, 2002.

/S/ Robert G. Chavarry

Roberto G. Chavarry  
Regional Director  
National Labor Relations Board  
Region 25  
Room 238, Minton-Capehart Building  
575 North Pennsylvania Street  
Indianapolis, IN 46204-1577

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